IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1342 OF 1996

Ghanshyam Bhanushankar Trivedi,
an adult, Hindu Indian Inha-
bitant, at present residing
at Flat No.5, Vidya Prasad,
Sion, Bombay-400 022. .... Petitioner

- Versus -

1. The Competent Authority
under Bombay Land Acquisition
Act 1948, through State
of Maharashtra, Mantralaya,
Bombay-400 032.

2. Mrs. Sudha Bhave,
Appellate Authority and
Secretary of Government of
Maharashtra, Mantralaya,
Bombay 400 032.

3. Municipal Corporation of
Greater Bombay, having their
office at Mahapalika House,
Mahapalika Marg, Bombay
400 032.

4. Anil Marathe,
Hindu Indian Inhabitant,

at present residing at Flat

No.7, 47/A Vidyaprasad,

Sion, Bombay 400 022. .... Respondents

Shri S.B. Prabhawalkar for the Petitioner.

None for the Respondent Nos.1 to 3.

Shri C.P. Deogirikar for the Respondent No.4.

CORAM: R.M.S. KHANDEPARKAR &

V.M. KANADE, JJ.

DATED: OCTOBER 04, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Leave to amend granted. Amendment to be carried out forthwith.

2. By the present petition the petitioner seeks to challenge the orders dated 2-12-1995 and 11-3-1996 passed by the respondent Nos.1 and 2 respectively, and further to restrain the respondents from taking resort to the provisions of the Bombay Land Requisition Act, 1948 and evicting the petitioner from the suit premises.

3. Few facts relevant for the decision are that the petitioner acquired premises on tenancy basis at Block No.4, Pithalewadi, Bhandar Galli, Mahim, Mumbai in the year 1948. On 14-2-1955 the petitioner received

eviction notice from the Assistant Engineer, Town Planning Department of the 3rd respondent informing the petitioner that the building was required to be demolished for the purpose of road widening. In the year 1956 the petitioner applied for alternative accommodation under the homeless category to the accommodation officer of the respondent No.1. His application in that regard being allowed, the petitioner under the order dated 29-1-1958 passed by the accommodation officer was allotted with the premises being Flat No.3, 1st floor, Dhanbai Mulchand Nivas, 117 Dadiseth Agiary Lane, Bombay. In 1960 the said premises in occupation of the petitioner were derequisitioned by the Government at the behest of the landlord thereof and therefore the petitioner had to vacate the said premises. On further request by the petitioner, he was allotted another accommodation at Block No.5, 1st floor, Vidyaprasad, Plot No.47-A, Sion, Mumbai under the order of allotment dated 16-11-1960. The petitioner accordingly occupied the same. However, in January, 1991 the petitioner received show cause notice from the respondent No.1 as to why the premises should not be derequisitioned and he should not be evicted from the said premises. The petitioner replied to the said notice on 1-7-1991 and in the same month the said proceedings were dropped. However, on 18-10-1995 the competent authority again initiated fresh proceedings at the behest of the owner of the premises and a show cause

notice was served as to why the premises should not be derequisitioned. The petitioner filed his reply on 4-11-1995. However, by order dated 2-12-1995 the respondent No.1 passed the eviction order calling upon the petitioner to vacate the premises within 30 days. The petitioner preferred appeal against the said order which came to be heard and thereafter was disposed of by the respondent No.2, the appellate authority on 11-3-1996 dismissed the appeal and confirmed the directions issued by the respondent No.1 to vacate the premises by 30-4-1996. The respondent No.1 extended the period for vacating the premises till 4-5-1996. Hence, the present petition.

4. While assailing the impugned order, the learned Advocate for the petitioner submitted that the respondent No.1 could not have passed the impugned order dated 2-12-1995 without there being any breach of conditions of the earlier order in favour of the petitioner. He further submitted that there was no breach of any of the conditions of allotment order dated 11-11-1960 by the petitioner. It was next contended that in any case there was no order directing derequisition of the premises as the purpose for which the premises were requisitioned had not come to an end and the purpose was for the occupation thereof by the petitioner. It is also sought to be contended on behalf of the petitioner that in terms of Section 27 r/w

Section 7(2)(b) of the Maharashtra Rent Control Act, 1999, hereinafter called as "the Rent Act", the petitioner having continued to be in possession of the premises even on 7-12-1996 as the Government allottee, has acquired the status of a tenant and therefore can be evicted only by taking resort to the provisions of the Rent Act and not otherwise. The learned Advocate appearing for the respondent No.4, however, has submitted that the order passed on 2-12-1995 disclose the decision to derequisition the premises and consequently the need for vacating the premises by the petitioner as the premises are to be delivered to the respondent No.4. Drawing attention to the decision of the **Grahak Sanstha Manch and others v. State of Maharashtra,** reported in AIR 1994 SC 2319 submitted that the requisitioning of premises cannot be a permanent arrangement. He submitted that since the order of eviction was passed and confirmed prior to 7-12-1996, no protection contemplated under Section 27 of the Rent Act is available to the petitioner and in that regard sought to place reliance in the decision in the matter of **Rasheed A. Maskati and another v. State of Maharashtra and others,** reported in 1998 (2) Mh.L.J. 188, as also **Maheshchandra Trikamji Gajjar v. State of Maharashtra and others,** reported in (2000) 3 SCC 295.

5. As regards the contention that there had been no derequisition order passed in the matter, the order

dated 6-3-1996 itself discloses that the premises were ordered to be derequisitioned taking into consideration the decision of the Apex Court in two Writ Petitions, namely, 53 of 1993 and 404 of 1986 and therefore there is no substance in the contention that there was no decision for derequisition of the premises.

6. As regards the contention of the petitioner that the petitioner is a Government allottee and was in possession of the premises on 7-12-1996 and therefore is entitled for protection under Section 27 of the Rent Act, it is to be seen that undoubtedly for the purpose of the Rent Act if a person was found in occupation of any residential premises on 7-12-1996 having been inducted therein consequent to the allotment order by the Government and the premises having been requisitioned, then he would be a Government allottee in relation to such premises. Any such person can be deemed to have become tenant of the landlord in relation to such premises in view of the provisions comprised under Section 27. However, the important factor which is to be noted here is that such person must be in occupation of the premises on 7-12-1996 pursuant to the subsisting allotment order by the Government on that day. If the allotment order is already revoked or cancelled and yet the person continues to be in possession of the premises on 7-12-1996, then such a person cannot claim to be a Government allottee. In

order to enable him to claim statutory protection under Section 27, he has necessarily to be a Government allottee and to be a Government allottee he must have a valid subsisting order of allotment issued by the Government in his favour in relation to the premises in his occupation.

7. In the case in hand, undisputedly, the allotment order in favour of the petitioner in relation to the premises in question was terminated on 2-12-1995. He was ordered to vacate the premises. His efforts to get the order set aside by the appellate authority also did not yield any fruitful result. On the contrary, the appeal was dismissed, confirming the order passed by the competent authority. The said appellate order was passed on 11-3-1996. Obviously much prior to 7-12-1996, the petitioner ceased to have the status of a Government allottee in relation to the said premises. Consequently, in terms of the definition "Government allottee" under Section 7(2)(b), the petitioner did not satisfy the necessary ingredients of the said Section and therefore could not claim to have continued to be a Government allottee on 7-12-1996.

8. Indeed, the decision of the Division Bench of this Court in **Rasheed Maskati's** case (supra) is squarely applicable to the facts of the case in hand. Therein, the order of eviction against the legal heirs of the

allottee was passed on 9-10-1995 and the appeal was dismissed on 11-3-1996. The Ordinance No.23 of 1996 was issued by the State Government on 7-12-1996, amending the Bombay Rent Requisition Act and the occupant being given the statutory tenancy right and protection under the Rent Act. It was held in those facts that the status of the heir as Government allottee had come to an end on passing of the order by the competent authority on 9-10-1995 and it was confirmed by the appellate authority on 11-3-1996 and the occupants were required to vacate the premises by 31-7-1996, much prior to 7-12-1996 and therefore the occupants were not covered by the protection available under the Rent Act to the Government allottees in possession of the premises on 7-12-1996.

9. It was, however, sought to be contended on behalf of the petitioner that he had been continuously contesting the claim of the respondents about the termination of his right to occupy the premises and he continued to be in occupation of the premises and the orders of eviction were stayed by this Court in this petition. The right of the petitioner to occupy the premises as a Government allottee came to an end on 2-12-1995 and the said fact was also confirmed by the appellate authority on 11-3-1996 and in any case the petitioner was directed to vacate the premises latest by 4-5-1996. There is clear admission about these facts in the petition filed by the

petitioner himself. Being so, his right to occupy the premises came to an end much prior to 7-12-1996 and hence merely because there was a stay granted by this Court during the pendency of this petition, that would not enure to the benefit of the petitioner to contend that the petitioner's right as a Government allottee continued even on 7-12-1996. He was rather in occupation by virtue of order passed by this Court in the writ petition and not on account of he being a Government allottee in terms of the order by the Government.

10. The learned Advocate for the respondent No.4 is justified in contending that the requisitioning cannot be a permanent arrangement but it is purely a temporary arrangement. The decision of the Apex Court in **Grahak Sanstha Manch's** case (supra) is very clear in that regard. Being so, the petitioner cannot insist to continue to be in occupation of the premises indefinitely. Undisputedly, initially the petitioner was allotted the premises as a temporary arrangement for the benefit of the petitioner so that he could arrange himself for alternative premises, either on rent or otherwise. The requisition of the premises for the occupation of the petitioner was not a permanent arrangement. Being so, the petitioner cannot insist to continue to be in occupation of such premises and hence no fault can be found with the order passed by the

authorities terminating his right to occupy the premises and directing him to vacate the same.

11. The contention that there was no breach of condition of the allotment order itself does not justify that the petitioner should have been allowed to occupy the premises once it is clear that the premises which were allowed to be occupied by the petitioner were requisitioned premises. Any such direction would be directly in contravention of the decision of the Apex Court in Grahak Sanstha Manch's case.

12. Needless to say that in view of the rejection of the contention of the petitioner, he is bound to vacate the premises and the premises are required to be delivered to the respondent No.4 by the other respondents. Merely because the petition in that regard by the respondent No.4 has been dismissed for default, that would not come in the way of the respondent No.4 in getting the vacant possession of the suit premises nor it would relieve the other respondents or the petitioner from vacating the premises and delivering the possession thereof to the respondent No.2 at the earliest possible.

13. In the result, therefore, there is absolutely no substance in the contentions sought to be raised in the petition and the petition is liable to be dismissed and the order passed by the competent authority is to be

confirmed and the respondent No.4 would be entitled for vacant possession of the premises.

14. At this stage, the learned Advocate for the petitioner prays for extension of period for vacating the premises. In view of the stay granted by the Court the petitioner has continued to be in possession of the premises. Accordingly, the period for vacating the premises is extended till 15-11-2005, failing which the other respondents shall be entitled to execute the order of eviction and shall be subject to the condition that the petitioner shall not be entitled to induct any third person in the said premises nor to create any third party interest therein. The rule is made absolute accordingly with no order as to costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**